

DISTRICT ATTORNEYS

Budget Summary							
Fund	2002-03 Base Year Doubled	2003-05 Governor	2003-05 Jt. Finance	2003-05 Legislature	2003-05 Act 33	Act 33 Change Over Base Year Doubled	
						Amount	Percent
GPR	\$72,791,800	\$72,836,600	\$72,569,000	\$72,569,000	\$72,569,000	- \$222,800	- 0.3%
PR	<u>3,291,600</u>	<u>4,305,200</u>	<u>4,860,200</u>	<u>4,860,200</u>	<u>3,540,200</u>	<u>248,600</u>	7.6
TOTAL	\$76,083,400	\$77,141,800	\$77,429,200	\$77,429,200	\$76,109,200	\$25,800	< 0.1%

FTE Position Summary						
Fund	2002-03 Base	2004-05 Governor	2004-05 Jt. Finance	2004-05 Legislature	2004-05 Act 33	Act 33 Change Over 2002-03 Base
GPR	390.40	375.40	375.40	375.40	375.40	- 15.00
PR	<u>36.75</u>	<u>26.50</u>	<u>33.50</u>	<u>33.50</u>	<u>22.50</u>	<u>- 14.25</u>
TOTAL	427.15	401.90	408.90	408.90	397.90	- 29.25

Budget Change Items

1. STANDARD BUDGET ADJUSTMENTS

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR	\$2,001,400	0.00	- \$267,600	0.00	\$1,733,800	0.00
PR	<u>0</u>	<u>- 14.25</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>- 14.25</u>
Total	\$2,001,400	- 14.25	- \$267,600	0.00	\$1,733,800	- 14.25

Governor: Provide standard adjustments to the base budget totaling \$989,600 GPR and -9.25 PR positions in 2003-04 and \$1,011,800 GPR and -14.25 PR positions in 2004-05. Adjustments are for: (a) turnover reduction (-\$195,000 GPR annually); (b) removal of noncontinuing elements from the base (-9.25 PR positions in 2003-04 and -14.25 PR positions in 2004-05); (c) full funding of continuing salaries and fringe benefits (\$998,900 GPR annually); (d) night and weekend differential (\$63,000 GPR annually); and (e) fifth week of vacation as cash (\$122,700 GPR in 2003-04 and \$144,900 GPR in 2004-05).

Joint Finance/Legislature: Delete funding for fifth week of vacation as cash (-\$122,700 GPR in 2003-04 and -\$144,900 GPR in 2004-05).

2. BASE BUDGET REDUCTION [LFB Paper 270]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Veto (Chg. to Leg)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions	Funding	Positions
GPR	-\$1,800,000	- 15.00	\$0	0.00	\$0	0.00	-\$1,800,000	- 15.00
PR	0	0.00	1,320,000	11.00	- 1,320,000	- 11.00	0	0.00
Total	-\$1,800,000	- 15.00	\$1,320,000	11.00	-\$1,320,000	- 11.00	-\$1,800,000	- 15.00

Governor: Reduce the GPR salaries and fringe benefits appropriation by \$900,000 GPR and 15.0 GPR positions annually. The base reduction would be applied to amounts budgeted for salaries and fringe benefits. The adjustment represents a 2.5% annual reduction to the District Attorneys' GPR adjusted base for state operations. The bill does not identify how this base budget reduction would be distributed among individual district attorney offices.

Joint Finance/Legislature: Provide \$660,000 PR (\$165,000 PR in state penalty assessment matching funds and \$495,000 PR in matched federal Byrne funding) and 11.0 PR positions annually to the District Attorneys' gifts and grants appropriation to partially restore deleted assistant district attorney positions. [See "Administration--Office of Justice Assistance" for additional information on the source of these funds.]

Veto by Governor [C-6]: Delete funding for the 11.0 PR positions by lining out the appropriated amounts and writing in reduced amounts to reflect the deletion of \$660,000 PR annually. Further, the Governor's veto message requests the DOA Secretary not to allot the funding for these positions.

[Act 33 Vetoed Sections: 286 (as it relates to s. 20.475(1)(h)) and 9101(13p)]

3. MULTIJURISDICTIONAL ENFORCEMENT GROUP ASSISTANT DISTRICT ATTORNEY POSITIONS [LFB Paper 271]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
PR	\$767,400	4.00	-\$765,000	- 4.00	\$2,400	0.00

Governor: Provide \$376,900 in 2003-04 and \$390,800 in 2004-05 and 4.0 project positions annually to provide 3.0 additional assistant district attorney positions to Milwaukee County and 1.0 additional assistant district attorney position to Dane County. The positions would be added to multijurisdictional enforcement groups in both counties to prosecute criminal violations of Chapter 961 (the Uniform Controlled Substances Act).

A multijurisdictional enforcement group is a cooperative law enforcement team in which local agencies combine resources across jurisdictional lines. The program revenue to support the new positions would be provided from federal Byrne anti-drug enforcement program grant money and matching penalty assessment funds.

Joint Finance/Legislature: Delete \$376,900 in 2003-04 and \$390,800 in 2004-05 and 4.0 project positions annually from the District Attorneys' interagency and intra-agency assistance appropriation to eliminate duplicative expenditure and position authority for these positions, which are already funded and authorized as permanent positions under the agency's gifts and grants appropriation. Provide standard budget adjustments of -\$5,600 in 2003-04 and \$8,300 in 2004-05 to the gifts and grants appropriation to fully fund the ongoing salary and fringe benefits for these existing positions.

[Act 33 Sections: 9101(1)&(2)]

4. SPECIAL PROSECUTION CLERKS FEE INCREASE AND ASSOCIATED OPERATION CEASEFIRE FUNDING CONVERSION [LFB Paper 272]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	\$176,200	\$80,700	\$256,900
PR-REV	0	256,900	256,900
GPR	-\$156,600	\$0	-\$156,600
PR	<u>164,600</u>	<u>0</u>	<u>164,600</u>
Total	\$8,000	\$0	\$8,000

Governor: *Special Prosecution Clerks Fee Increase.* Increase the special prosecution clerks fee from \$2 to \$3.50 and provide that the increase would first apply to pleadings filed on the effective date of the bill. The Governor estimates that this fee increase would generate additional revenue of \$89,100 in 2003-04 and \$87,100 in 2004-05. Under the bill, the increased special prosecution clerks fee revenue is incorrectly identified as GPR-Earned. A technical correction is needed to identify it as program revenue.

The special prosecution clerks fee is assessed only in Milwaukee County whenever a person pays a fee for: (a) civil, small claims, forfeiture (other than safety belt use violations), wage earner or garnishment actions; (b) an appeal from municipal court; (c) a third party complaint in a civil action; or (d) filing a counterclaim or cross complaint in a small claims action. The fee is currently used to reimburse Milwaukee County for the salary and fringe benefits costs of 4.5 clerks in the Milwaukee County District Attorney's office that provide clerical services to prosecutors handling violent crime and felony drug violations. The Governor would use the increased fee revenue, as described below, to reimburse Milwaukee County for the salary and fringe benefits costs of 2.0 existing Operation Ceasefire clerks, and would delete the GPR funding currently used to fund these positions.

Operation Ceasefire Funding Conversion. Delete \$78,300 GPR annually and provide \$81,100 PR in 2003-04 and \$83,500 PR in 2004-05 to reflect the funding conversion of local assistance payments to the Milwaukee County District Attorney's office for the costs of 2.0 existing clerk positions for cases involving the unlawful possession or use of firearms ("Operation Ceasefire"). Under s. 978.13(1)(d) of the statutes, the state is required to fund the costs of these positions with GPR funds. This requirement is not modified under the Governor's recommendation.

The increased PR expenditure authority would be provided under the District Attorneys' interagency and intra-agency assistance appropriation. Funds credited to this appropriation derive from payments received from other state agencies for the administration of specific programs. The increased expenditure authority should be provided under an amended version of the District Attorneys' other employees appropriation, which currently reimburses Milwaukee County from the special prosecution clerks fee to support staff involved in the prosecution of certain violent crime and felony drug violations.

The Executive Budget Book states that the Governor's intent is to fund the two Operation Ceasefire positions from the increased Milwaukee County special prosecution clerks fee. Technical corrections should be made to: (a) delete the current law requirement that the clerks involved in firearms prosecutions be supported from the District Attorneys' GPR-funded firearms prosecution costs appropriation; and (b) amend the other employees appropriation to permit its use to fund these positions from the special prosecution clerks fee and provide the necessary increased expenditure authority under that appropriation rather than under the interagency and intra-agency assistance appropriation.

Joint Finance/Legislature: Include the following technical corrections: (a) provide \$81,100 PR in 2003-04 and \$83,500 PR in 2004-05 to the other employees appropriation to fully fund the two Operation Ceasefire clerks from special prosecution clerks fee revenue; (b) amend the appropriation to permit its use to fund these clerk positions; (c) delete the requirement that these clerks be funded from the GPR firearm prosecution costs appropriation; and (d) delete \$81,100 PR in 2003-04 and \$83,500 PR in 2004-05 of increased expenditure authority originally provided under the interagency and intra-agency assistance appropriation to fund these clerk positions.

In addition: (a) reduce GPR-Earned collections under District Attorneys by \$89,100 in 2003-04 and \$87,100 in 2004-05 and provide a corresponding PR-REV increase; (b) estimate additional PR-REV from the increased special prosecution clerks fee of \$21,000 in 2003-04 and \$59,700 in 2004-05; and (c) lapse \$110,100 in 2003-04 and \$146,800 in 2004-05 to the general fund from increased special prosecution clerks fee appropriation balances.

[Act 33 Sections: 563d, 2712, 2804, 2804d, 9212(1x), and 9308(3)]

**5. FULL FUNDING FOR MILWAUKEE COUNTY CLERKS [LFB
Paper 272]**

PR

\$34,400

Governor/Legislature: Provide \$16,200 in 2003-04 and \$18,200 in 2004-05 to fully fund the salary and fringe benefits costs of 4.5 clerks in the Milwaukee County District Attorney's office who provide clerical services to prosecutors handling violent crime and felony drug violations in Milwaukee County's speedy drug and violent crime courts. Program revenue would be provided from the special prosecution clerks fee collected in Milwaukee County.

6. FULL FUNDING OF SPECIALIZED PROSECUTOR POSITIONS

PR

\$46,900

Governor/Legislature: Provide \$19,600 in 2003-04 and \$27,300 in 2004-05 to fully fund the following specialized prosecutor positions:

DNA Evidence Prosecutor. Provide \$9,500 in 2003-04 and \$14,300 in 2004-05 to fully fund 1.0 assistant district attorney in Milwaukee County who serves as a statewide authority and resource on the use of DNA evidence in the courtroom. The additional program revenue would be provided from a portion of the existing \$5 crime lab and drug law enforcement assessment and the \$250 DNA surcharge imposed in certain criminal and forfeiture actions. In a separate initiative under the Department of Justice, the Governor is recommending increasing the crime lab and drug law enforcement assessment from the current \$5 to \$7.

Restorative Justice Prosecutors. Provide \$10,100 in 2003-04 and \$13,000 in 2004-05 to fully fund 2.0 assistant district attorney project positions to perform restorative justice services (1.0 position in Milwaukee County and 1.0 position in Outagamie County). These four-year project positions were originally created under 2001 Wisconsin Act 16 and are scheduled to terminate on June 30, 2005. The positions are funded with federal Byrne anti-drug enforcement program grant money and matching penalty assessment funds, both of which would also provide the additional funds recommended by the Governor.

These positions: (a) establish restorative justice programs that provide support to the victim, help reintegrate the victim into community life, and provide a forum where an offender may meet with the victim or engage in other activities to discuss the impact of the offender's crime on the victim or on the community, explore potential restorative responses by the offender and provide methods for reintegrating the offender into community life; (b) assist district attorneys in other counties with establishing restorative justice programs; and (c) maintain program records relating to program implementation, assistance provided to other DAs in implementing similar programs, the number of victims and offenders served, the types of offenses addressed and comparative recidivism rates among offenders served by a restorative justice program compared to offenders not served by such programs.

7. CREATION OF A STATE PROSECUTORS BOARD [LFB Paper 273]

Governor: *State Prosecutors Board Created under DOA.* Create a State Prosecutors Board, attached, for limited administrative purposes, to the Department of Administration (DOA). Specify that the Board would consist of eight district attorneys (DAs), appointed by the Governor to staggered four-year terms. Establish initial two-year terms for the first four members appointed to the Board. Provide that: (a) members of the Board may not continue to serve if they cease to hold the office of district attorney; and (b) Board membership would not disqualify an individual from holding any other public office or employment. Specify that the Board Chair would be designated annually by the Governor.

Powers and Duties of the Board. Provide that the Board must: (a) adopt advisory guidelines or standards for DAs to use in determining when criminal cases should be prosecuted or diverted to nonprosecutorial programs; (b) promulgate and administer rules regarding the temporary assignment of DAs and deputy and assistant district attorneys (DDAs and ADAs) from one prosecutorial unit to another; and (c) hire and assign "assignable prosecutors" to prosecutorial units for the period the Board sees fit. Authorize the Board to hire staff to assist it in the performance of its duties. No Board staff would be authorized under the bill. Additionally, no appropriation would be created or modified to fund Board staff.

Provide that the Board must supervise the State Prosecutors Office (SPO). Under current law, the SPO is responsible for coordinating DOA administrative duties regarding DA offices. Major responsibilities include: (a) payroll; (b) fringe benefits; (c) budgets; (d) billing counties for program revenue positions; (e) collective bargaining; (f) advising elected DAs on their rights and responsibilities under the ADA collective bargaining agreement; (g) producing fiscal notes and bill analyses for legislative proposals affecting DAs; and (h) serving as a central point of contact for all prosecutors.

Under current law, sexually violent person commitment prosecutors (one ADA in both Brown and Milwaukee Counties) may file and prosecute sexually violent person commitment proceedings under Chapter 980 in any prosecutorial unit in the state at the request of the district attorney of the prosecutorial unit. Delete the requirement that these actions be filed and prosecuted at the request of the DA of the relevant prosecutorial unit, and instead provide that these actions be filed and prosecuted as permitted or required under rules adopted by the Board.

Under current law, two ADAs (one ADA in both Milwaukee and Outagamie Counties) have a duty to assist DAs in establishing restorative justice programs in the state. Provide that these ADAs have this duty as permitted or required under rules adopted by the Board.

Modified Duties of District Attorneys. Provide that in determining whether to prosecute a case, a district attorney must consider the guidelines adopted by the Board. Further provide that a district attorney is not bound by these guidelines and that there is no right to appeal based on a prosecutor's decision to depart in any way from any guideline. Specify that DAs must consult with the Board regarding the appointment of temporary counsel. Provide that

DAs must also supervise assignable prosecutors assigned to their prosecutorial units and make appropriate assignments of such assignable prosecutors throughout their prosecutorial units.

Assignable Prosecutors Employed and Assigned by the Board. Specify that an "assignable prosecutor" is an attorney employed directly by the Board and who is assignable by the Board to any of the current 71 prosecutorial units in the state. Provide that any such assignable prosecutor may exercise any power or perform any duty required by law to be performed by the district attorney of a prosecutorial unit. Modify the District Attorney's GPR-funded salaries and fringe benefits appropriation to permit its use to fund assignable prosecutor staffing costs.

According to the Executive Budget Book, it is the intent of the Governor to create 15.0 assignable prosecutors employed by the Board. The bill provides no funding or position authorization for these assignable prosecutors. According to DOA budget staff, it is the intent of the Governor to transfer 15.0 existing prosecutorial positions from individual DA offices in the state to the Board to work as assignable prosecutors.

Specify that assignable prosecutors, in addition to DAs, DDAs and ADAs generally under current law, may not: (a) receive any fee or reward from or on behalf of any prosecutor or other individual for services in any matter to which it is the district attorney's official duty to attend; (b) be concerned as attorney for either party, other than the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution commenced but undetermined depends; (c) hold any judicial office; (d) hold the office or act as corporation counsel or municipal attorney; (e) defend a person against a crime if they served as prosecutor for the county in the same case at the time of the person's arrest, examination, or indictment; and (f) engage in the private practice of law. Extend a current law prohibition against a common carrier or non-municipal utility from retaining or employing ADAs, to also include assignable prosecutors.

Include clarifying language that the two citizen members of the Crime Victims Rights Board, attached to the Department of Justice, may not be assignable prosecutors. Further provide that no member of the Public Defender Board may be an assignable prosecutor.

Provide that when a county civil service commission holds a demotion, suspension, discharge or reinstatement hearing, it may request the presence of a DA to act with the commission in an advisory capacity. Under current law, the commission may request the presence of an ADA. This change would: (a) specifically authorize county civil service commissions to request the presence of the elected DA; and (b) authorize assignable prosecutors, as well as ADAs, to serve these commissions, as assignable prosecutors and ADAs may perform any duty required by law to be performed by the elected DA.

Assignable Prosecutor Employment Rights and Status. Provide that for purposes of labor relations, collective bargaining in state employment, and salary administration, assignable prosecutors would be considered ADAs. Further provide that for purposes of current law coverage of demotion, suspension, discharge and layoff rights for ADAs, an ADA would include an assignable prosecutor. As a result, an assignable prosecutor: (a) who has served with

the state for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause; and (b) may appeal such an action if the appeal alleges that the decision was not based on just cause. Specify that assignable prosecutors would be assigned to the unclassified service. Further provide that state employee annual leave and Wisconsin Retirement System coverage provisions that apply to other prosecutors would not apply to assignable prosecutors. The apparent intent of these annual leave and retirement provisions is to exempt assignable prosecutors from the application of transitional provisions governing the transfer of DAs, DDAs, and ADAs to state service on January 1, 1990. As drafted, however, these prohibitions may create ambiguity regarding whether assignable prosecutors qualify for these benefits.

Joint Finance/Legislature: Delete provision.